

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

E2INTERACTIVE, INC., and
INTERACTIVE COMMUNICATIONS
INTERNATIONAL, INC.,

Plaintiffs,

Case No. 3:09-CV-629-slc

v.

BLACKHAWK NETWORK, INC.,

Defendant.

**DEFENDANT BLACKHAWK NETWORK, INC.'S MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 7,630,926**

James D. Peterson, State Bar No. 1022819
Bryan J. Cahill, State Bar No. 1055439
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Post Office Box 2719
Madison, WI 53701-2719
Phone: (608) 257-3911
Fax: (608) 257-0609
Email: jpeterson@gklaw.com
Email: bcahill@gklaw.com

Alan M. Fisch, DC Bar No. 453068
Jason F. Hoffman, DC Bar No. 467927
KAYE SCHOLER LLP
The McPherson Building
901 Fifteenth Street, NW
Washington, DC 20005-2327
Phone: (202) 682-3500
Fax: (202) 682-3580
Email: alan.fisch@kayescholer.com
Email: jason.hoffman@kayescholer.com

Dated: August 25, 2011

Attorneys for
BLACKHAWK NETWORK, INC.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant Blackhawk Network, Inc. (“Blackhawk”) respectfully moves for summary judgment on Plaintiffs e2Interactive, Inc. and Interactive Communications International, Inc.’s (collectively, “InComm”) claims for patent infringement of U.S. Patent No. 7,630,926.

On August, 17, 2011, Blackhawk filed a motion for leave to file a second motion for summary judgment (Docket No. 195). On August, 24, 2011, InComm filed its opposition to Blackhawk’s motion (Docket No. 197). The Court has not yet ruled on Blackhawk’s motion for leave. However, in the event that the Court grants Blackhawk’s motion for leave, Blackhawk submits this motion for summary judgment in order to comply with the schedule set out in the Second Amended Scheduling Order (Docket No. 130).

In support of its motion for summary judgment, Blackhawk submits the following: June 30, 2011 Rule 30(b)(6) Deposition Transcript of Gregory M. Murphy on behalf of InComm; June 17, 2011 Deposition Transcript of Adiyath Jayaprakash; July 13, 2011 Rule 30(b)(6) Deposition Transcript of Sean Anderson on behalf of Blackhawk; June 9, 2011 Deposition Transcript of Manoj Krishna Kannembath; August 2, 2011 Deposition Transcript of M. Brooks Smith; Declaration of Alan M. Fisch; Declaration of Sean Anderson; Declaration of Adiyath Jayaprakash; Declaration of Manoj Krishna Kannembath; Declaration of Lori Brietzke; Blackhawk’s Proposed Findings of Fact in Support of its Motion for Summary Judgment of Non-infringement of U.S. Patent No. 7,630,926; and Blackhawk’s Brief in Support of its Motion for Summary Judgment of Non-infringement of U.S. Patent No. 7,630,926.

For the reasons set forth fully in the accompanying brief, there are no genuine issues of material fact that would preclude this Court from granting summary judgment of non-infringement of U.S. Patent No. 7,630,926. In conjunction with Blackhawk’s original motion for

summary judgment (Docket Nos. 161-169), the Court may dispose of the entire case upon a finding that Blackhawk does not infringe the asserted patents.¹

WHEREFORE, Defendant respectfully requests that the Court grant Defendant's motion.

Respectfully submitted this 25th day of August, 2011.

/s/ Alan M. Fisch

Alan M. Fisch

James D. Peterson, State Bar No. 1022819

Bryan J. Cahill, State Bar No. 1055439

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Madison, WI 53701-2719

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Fax: (608) 257-0609

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Fax: (202) 682-3580

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jason.hoffman@kayescholer.com

¹ Blackhawk's original Motion for Summary Judgment, filed on May 16, 2011, addressed non-infringement of all products and services accused by InComm at the time of filing. This second motion is necessary because, on June 2, 2011, after Blackhawk filed its original motion, InComm amended its infringement contentions to add Blackhawk's Real-Time Replenishment System that provides cardless top-up transactions as an accused service.

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2011, I caused this document to be electronically filed with the Clerk of Court using the ECF system, which will make these documents available to all counsel of record for viewing and downloading from the ECF system.

/s/ Alan M. Fisch

Alan M. Fisch